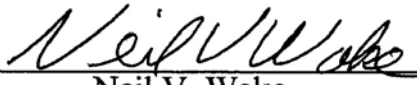


1 attorneys fees with respect to Plaintiff's state law claims or by virtue of attorneys fees
2 provisions in the promissory note.

3 RESPA, on the other hand, is a federal statute which gives this Court discretion to
4 award attorneys fees. 12 U.S.C. § 2607(d)(5). This Court does not believe that A.R.S. § 33-
5 814(G) shields Plaintiff from RESPA's attorneys fees provision — otherwise, Arizona would
6 be upsetting federal policy regarding such fee awards. Nonetheless, Defendants must satisfy
7 the “frivolous, unreasonable or without foundation” standard to receive fees. *See Lane v.*
8 *Residential Funding Corp.*, 323 F.3d 739, 746–48 (9th Cir. 2003) (holding that the standard
9 for defendants' recovery under fee-shifting provisions in civil rights statutes also applies to
10 fee-shifting provision in RESPA). The Court will not say, on this record, that Plaintiff's
11 RESPA claim was frivolous, unreasonable, or without foundation. The Court never reached
12 the merits of this claim, but dismissed it for failure to satisfy the statute of limitations. (*See*
13 *Doc. 98 at 2.*) Therefore, the Court will not award attorneys fees to Defendants under
14 RESPA.

15 IT IS THEREFORE ORDERED that Defendants' “Motion for Attorneys' Fees” (Doc.
16 115) is DENIED.

17 DATED this 10th day of March, 2011.

18
19 
20 _____
Neil V. Wake
United States District Judge